84-1940

No.

Office-Supreme Court, U.S.
FILED
MAY 28 1985
ALEXANDER L. STEVAS,
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term 1985,

JAMES PORTER, Pro Se,

Petitioner,

vs.

WILLIAM O'FARRELL, President, WILLIAM H. BROWN, Secretary Treasurer, Teamsters LOCAL #500

Appelles,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JAMES PORTER
Petitioner, Pro Se.
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Philadelphia, Pa. 19124
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QUESTIONS PRESENTED FOR REVIEW

1. Was Petitioner's rights violated under the Fourteenth Amendment of the United States constitution?

2. Was Petitioner's rights violated under the First Amendment of the United States Constitution?

3. Whether "Pro Se" cases in The Third District Court receive an inferior standard of ;udication?

4. Was it the intent of Congress to exclude the white male from the protection of his civil rights under the Civil Rights Act of 1964 and the Equal Employment Act of 1972?

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No.

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October Term, 1985

JAMES PORTER, Pro Se.

Petitioner.

vs.

WILLIAM O'FARRELL, President, WILLIAM BROWN, Secretary Treasurer, TEAMSTERS LOCAL #500.

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

The Petitioner, JAMES PORTER, Pro Se, respectfully prays that a writ of certiorari to review the judgment of the United States Court of Appeals

for the Third Circuit, entered January 31, 1985. Copy of memorandum attached as Appendix C 6 a.

Petitioner respectfully prays the Court will also review the judgment of the District Court for Eastern Pennsylvania, Philadelphia, Pa. entered June 27, 1984, Order attached as Appendix D 8 a.

The United States Court of Appeals for the Third Circuit denied Petitioner's petition for rehearing and suggestion for rehearing in banc, dated March 1, 1985. Copy of said order is attached as Appendix A 1 a.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The revelant statutory and constitutional provisions in volved are:

The United States Constitution, First Amendment

(the abridgement of the freedom of speech) United States Constitution, fourteenth Amendment (equal protection) ____ expelling or excluding from membership--the issuance of the withdrawal card; Equal Employment Opportunity Act of 1972- limiting, segragating or classifying its members in any way that deprives or limits employment opportunities--holder of withdrawal card gets less work. Whether "Pro Se" cases in the Third Circuit Court receive an inferior standard of judiction. Whether it is within the Federal guidelines and regulations that all "Pro Se" cases are routinely set aside to be heard by one person.

STATEMENT OF THE CASE

This case is a spin-off of other cases within the Federal Courts, in which Petitioner's former employer "Set up and Framed" Petitioner and conspired with Defendant William O'Farrell

resulting in Petitioner losing his job and being forced from the union.

Petitioner was issued a withdrawal card discriminatorily from Teamsters Local #500, April, 1981, while recuperating from an automobile accident and unable to work within the trade.

The Defendants actions were due to the fact that Petitioner had reported to the United States Dept. of Justice, and the United States Dept. of Labor, racketeering acts within said union. The issuing of the card was their way of trying to silence him.

Petitioner was a selective for the issuing of the withdrawal card as the Defendants did not issue same cards to members who were derelict in paying their dues, those who were fired for

reported for stealing and a member who was incarcarated for well over a year.

All past actions or endeavors by the Petitioner have been stymied in the Courts due to the influence and camaraderie of the law firm retained by Petitioner's former employer in order to cover up said "set-up and framing" of Petitioner.

In the Third Circuit Court of Appeals, "pro Se" cases are routinely set aside and heard by a select person or panel. This is an inferior standard of judication as Federal Guidelines Say: " all cases be treated equally.

REASONS FOR GRANTING THE WRIT

The District Court for the Eastern District of Pennsylvania in its judgment order, copy of said order is attached as Appendix D, 8 a, has raised a question of great import. If the Petitioner's "freedom of speech" is abridged, is this not a violation of the First Amendment of the U. S.

Constitution? If the Petitioner is a target for selective enforcment and exclusion from the union, is this not a violation of Petitioner's rights to "equal protection of the law" and a violation of the Fourteenth Amendment of the United States Constitution?

It is the Petitioner's belief that the Court above has erroneously opined the this Complaint does not belong in a Federal Court.

The Third Circuit Court failed to follow Federal guidelines which mandate that all cases receive the same equal and customary consideration given to non-pro se's. Pro se cases in this court are put aside, classified as mostly simple cases to be decided or considered by one select person, thereby denying Petitioner his "equal protection under the Law."

CONCLUSION

For the foregoing reasons, Petitioner James

Porter, Pro Se, respectfully requests that a writ of certiorari issue to review the judge ment of The United States District Court For The District of Eastern Pennsylvania and The United States Court of Appeal for the Third Circuit.

Respectfully submitted

JAMES PORTER
Petitioner, Pro Se

APPENDIX A

SUR PETITION FOR REHEARING DATED

March 1, 1985

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

No. 84-1434

JAMES PORTER

Appellant

vs.

WILLIAM O'FARRELL, President, WILLIAM H. BROWN, Secretary/Treasurer, TEAMSTERS Local #500

(Civil Action No. 83-0943 - E. D. of PA.)

Before: Alidsert, Chief Judge, and Seitz, Adams, Gibbons, Hunter, Weis, Garth, Higginbotham, Sloviter, Becker, Maris, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to

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the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for hearing is denied.

By the Court

Seitz

Circuit Judge

Attest:

Sally Mrvos

Clerk

Dated March 1, 1985

APPENDIX B

PETITION FOR REHEARING DATED FEBRUARY 12, 1985

UNITED STATES COURT OF APPEALLS FOR THE THIRD CIRCUIT

No. 84-1434

JAMES PORTER

appellant

vs.

WILLIAM O'FARRELL et al

(Civil Action E. D. PA No. 83-0493)

Before: ALIDSERT, Chief Judge, And SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, MARIS, Circuit Judges.

This appeal involves the legality of appellant being issued a withdrawal card by the defendants officers of Teamsters Local #500 while the

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legality of his discharge from employment is now a matter before the United States Third Circuit Court. While appellant was out of work due to an auto accident and was receiving benefits from the Teamsters Health and Welfare Funds during this period. Petitioner contends the defendants issued the card in order to silence him as he was an outspoken critic of some of their practices, thereby violating his rights under Amendment 1 of the Constitution which says in part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech",.

Petitioner further contends he is the victim of selective enforcment as other members of the union are not treated so. ie: Doug Borrell, truck driver for Frankford Grocery, Philadelphia, PA was confined to Ancoro, New Jersey State

Institution for a period of over one (1) year due to a felony charge by the courts. No withdrawal card was issued.

W. Walker, fired from his position as a truck driver for alleged stealing. Defendants stated Walker had a bad back and was on compensation. He did not return to work for a period of two & one-half years. No withdrawal card was issued.

A. Ogozerak also was unable to work because of a bad back after being fired as a truckdriver. He did not work for over one year. No withdrawal card was issued.

APPENDIX C

JUDGMENT ORDER DATED JANUARY 31, 1985

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No, 84-1434

JAMES PORTER

appellant

vs.

WILLIAM O'FARRELL , President, WILLIAM H. BROWN, Secretary/Treasurer, TEAMSTERS Local #500.

(Civil Action No. 83-0943 - E. D. Pa.)

District Judge: Honorable Joseph L. McGlynn Jr.)

Submitted under Third Curcuit Rule 12(6) January 30, 1985

Before: SEITZ, HUNTER AND MARIS, Circuit judges

After consideration of the contentions raised by the appellant.. it is

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ADJUDGED AND ORDERED that the judgment of the District court be and is hereby affirmed Costs taxed against appellant

By the Court

Seitz
Circuit Judge

Attest:

Sally Mrvos
Clerk

Dated January 31, 1985

APPENDIX D

JUDGMENT ORDER DATED June 21, 1984

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF PENNSYLVANIA

No. 83-0943

JAMES PORTER

APPELLANT

VS.

WILLIAM O'FARRELL et al

Before: MCGLYNN, District Judge

AND NOW, this 21st day of June 1984, upon consideration of the Motion to Dismiss and the Memorandum in support of filed by the defendants William O'Farrell, et al., it is hereby ORDERED.

THAT the within Complaint be dismissed for reason that this Court lacks jurisdiction over the subject matter.

By the Court

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J. McGlynn
District Judge

Dated June 21, 1984

entered June 27, 1984

APPENDIX E

In The

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

No. 84-1434

JAMES PORTER, Pro Se,

appellant

vs.

WILLIAM O'FARRELL, President, WILLIAM H. BROWN, Secretary/Treasurer Teamsters Local 500

appelles,

On appeal from the Order of The United States Eastern District of Pennsylvania, Civil Action No. 83-0943

BRIEF AND APPENDIX FOR APPELLES

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1. CERTIFICATION OF SUBJECT MATTER JURISDICTION

Insofar as whether subject matter jurisdiction is present is an issue in this case counsel for Appelles cannot certify that the court has such jurisdiction.

11. COUNTER STATEMENT OF ISSUE PRESENTED

Did the district Court and does not this lack subject matter jurisdiction over Appellants apparent cause of action?

Answered in the affirmative by the court below.

111. COUNTER STATEMENT OF THE STANDARD REVIEW

The Court should affirm the order of the District Court dismissing the matter of lack of subject matter jurisdiction.

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COUNTER STATEMENT OF THE CASE

From what is available on this record, it appears that James Porter complained in United States District Court for the Eastern district of Pennsylvania that his former union discriminated against him. The precise manner of discrimination appears to have been the union's issuance of a "withdrawal card" signifying, one supposes, that the labor organization would not seek employment positions for Mr. Porter. In a letter dated February 8, 1982, the union's secretary-treasurer wrote Mr. Porter reporting he was on "withdrawal" with the union as of April 14, 1981.

In his initial complaint Mr. Porter alleges Federal jurisdiction is present because the union in issuing the withdrawal card acted in contravention of Title VII of the Equal Employment Opportunity

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Act of 1972, found at 42 U.S.C. section 2000. He further protrays this discrimination as consisting of a program aimed at excluding him from union representation, from union membership because of his outspoken opposition to certain union policies.

Union officers O'Farrell and Brown, the president and secretary treasurer are the only named Defendants in Mr. Porter's action. In response to his complaint, the union officials filed a Motion to Dismiss alleging lack of subject matter jurisdiction. Mr. Porter responded with an answer in which he characterized Local #500 as an "employment agency" because it procures jobs for its members. He claims, it seems, that Local #500 discriminated under or discharge any individual or discriminate with respect to

compensation or conditions of employment, or "limiting an employee or classifying him in any way adversely affecting his status."

Mr. Porter also said in his answer that Local #500 discriminated as a "labor organization" within the meaning of Title VII by" 1. Expelling or excluding from membership 2. Limiting, segregating or classifying its members in any way that deprives or limits employment opportunties: 3. Causes an employer to discriminate. 4. Any discrimination arising because a person has filed a complaint or assisted in an investigation of a matter arising under this Title is "prohibited."

In this answer, Mr. Porter also brings into play 42 U.S.C.. 1983 without stating how his civil rights were violated purportedly by the defendants.

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While in his complaint he asked for "punitive damages" against each of the Defendants individually and/ or jointly in the amount of $350,000" in the anser to the Motion to Dismiss, he states: " due to the malicious and willfil actions of the Defendants", the damages to the plaintiff far exceed the $10,000 requirement necessary for this case to be subject to Federal jurisdiction.

On June 21, 1984, Judge Joseph McGlynn of the District Court granted O'Farrell and Brown"s Motion to Dismiss. Mr. Porter followed up with a "Motion to Vacate Reverse the Court Order dated June 21, 1984", alleging anew that the "defendants have violated "plaintiff's fourteenth Amendment rights , of "equal protection under the law." O'Farrell and Brown have adopted a policy favoring those loyal to them.

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The brief Mr. Porter submitted to this court restates the various grounds for relief cited in his earlier pleadings, additionally advancing the claim (at p. 6) that the "Defendants in their acts have abridged the privileges of the Plaintiff under the Constitution of free speech (sic) and expression thereby violating the rights guaranteed (sic) under the First Amendment."

V. ARGUMENT

It is obvious that James Porter's Federal lawsuit against two officers of his union suffers fatal defects in form and substance. Not only is subject matter jurisdiction necessary for the pursuit of a claim in Federal Court completely lacking, but basic forms have not been complied with. Mr. Porter's brief fails to comport with the

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requirements of Rule 28, Fed. r. App. Pro- . The Appellant's assembly of the record in this matter hardly satisfies the burden placed on the Appellant by Rule 11. Messr. O'Farrell and Brown and their Counsel have to hunt and peck in the dark to find out just what violations of the Federal Civil Law Mr. Porter allegedly suffered at their hands and/or what duty they owed him the violation of which is compensable through the exercise of Federal judicial process.

If this Court chooses to trear this matter as aclaim under Title VII, it can be dismissed at the outset. Mr. Porter has failed to fulfill the jurisdictional prerequisites for such an action. He has failed to (1) file a timely charge of employment discrimination with the Equal Opportunity Employment Commission and (2)

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receive and act upon the Commission's statutory notice of the right to sue. Alexander v Gardner-Denver Co. 415 U.S. 36, 39 L. E. 2d 147, 94 S. Ct. 1011 (1974); Smith v. Office of economic Opportunity for Arkansas 538 F. 2d. 226 (C.A. 8) (1976). Such prompt notice by filing with the EEOC must be maintained within ninety days pf the alleged unlawful employment practice. Dudley v Textron, Inc., Burkhart-Randall Division, 386 F. Supp. 602 (1974). Only if the EEOC dismisses the charge may a party file a civil action under 42 U.S.C. Section 2000-e Kaplowitz v. University of Chicago, 387 F. Supp. 602 (1974).

Besides failing to perform the rudimentary steps one must take before stating a claim under Title VII, Mr. Porter has not addressed himself

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to the policy of the act and thus his cause for action must fail for lack of subject matter jurisdiction.

Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000e et. seq. promotes equal employment opportunities by prescribing discrimination against an individual based on "race" color, religion, sex or national origin". 42 U.S.C section 2000e-2. Subject to proof, some of the allegations Mr. Porter makes against his union may give him a cause of action, but only if the effect of the cited discriminatory practice is felt by a person who fits into one of the named classifications. For example, a union's policy of favoritism (one of Mr Porter's allegations) would violate Title VII if the effect of such favoritism was to exclude minorities, (Ingram v

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Madison Square Garden Center, Inc. (482 F. Supp. 414 (1979), see also EEOC decision No. 77-35 (1978) EEOC Decision No. 77-41 (1978). But Mr. Porter has made no such claim either in his behalf or on behalf of others.

Should the Court consider Mr. Porter's action one under 42 U.S.C. Section 1983, the Federal Civil Rights Statute, then dismissal again is the only available remedy.

The Civil Rights Act, 42 USC, Section 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory subjects, or causes to be subjected , any citizen of the United States or any other person within the jurisdiction there of to the deprivation of any rights, privileges or imunities secured by the Constitution and laws, shall be liable to

> the party injured in an action at law, suit in equity, or other proper proceedings for redress."

In order to violate this Act, the action taken must be done under "color of state law." Monroe v. Pape, 365 US 167, 5 L. Ed. 1368, 1384 (1945), defined action taken "under color of state law " as:

> "Misuse of power, possessed by virture of state law and made possible only because the wrongdoer is closed with authority of state law."

There is no allegation in the Complaint that the Defendants acted pursuant to power possessed by virture of state law or purported to act with the authority of the state or state law. The allegations in the Complaint are simply concerned with actions taken by individual Defendants in their capacity as Union Officers.

Since the Complaint alleges no action under

"color of state law", the complaint has not alleged a violation of the Civil Rights Act.

VI. CONCLUSION

For the reasons advanced in the foregoing brief, Appellees request that this Court affirm the action of the District Court in dismissing the Complaint of James Porter.

Respectfully submitted,

Herbert K. Fisher, Esq.

Richard G. Freeman, Esq.